

U.S. Application Serial No. 10/601,311  
Restriction Requirement Mailed December 1, 2005  
Response to Restriction Requirement Dated January 31, 2006

Docket No. AKT3-5001-C1

### REMARKS/ARGUMENTS

In the Office Action, the Examiner issued a restriction requirement alleging that the application claims three distinct inventions (Groups I-III). Group I includes claims 1-16. Group II includes claim 17. Group III includes claims 18-25.

#### 1. Election in Response to Restriction

Pursuant to 37 C.F.R. § 1.142, Applicants hereby elect Group I (claims 1-16) with traverse. Claims 17-25 are withdrawn as being directed to non-elected subject matter pursuant to 37 C.F.R. 1.142(b). All of the pending claims now read on the elected subject matter.

Applicants reserve the right to petition for rejoinder under 37 C.F.R. § 1.144 with regard to the non-elected claims, once the elected claims are placed in condition for allowance. Applicants also reserve the right pursuant to 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of the present application.

#### 2. Traversal of Examiner's Restriction

Applicants traverse the Examiner's three-way restriction of the application on the grounds that the basis for restriction pursuant to MPEP §803 has not been met.

An application may properly be required to be restricted to one of two or more claimed inventions *only if*:

1. the inventions are independent or distinct as claimed; *and*
2. the search and examination of the entire application places a serious burden on the examiner.

MPEP §803. Accordingly, restriction is only proper when both elements are satisfied.

Applicants traverse the Examiner's restriction because the inventions are not distinct, and search and examination of the entire application does not place a serious burden on the examiner.

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**A. Independent Claims 1, 9, 16, 17 and 18 Relate to a Protein Comprising Residues 143-438 of SEQ. ID No. 1**

In the present application, each group of restricted claims specifically relate to a protein having at least 90% identity with residues 143-438 of SEQ. ID No. 1.

Claims are independent and can be subject to restriction when there is no disclosed relation between the claimed inventions. MPEP §806. In this instance, there is a clear relationship between all of the different restricted groups of claims, specifically the feature that the subject protein has at least 90% identity with residues 143-438 of SEQ. ID No. 1. With regard to independent claims 1 and 9, the claims specifically recite a protein having "*at least 90% identity with residues 143-438 of SEQ. ID No. 1.*" With regard to independent claim 16, the subject composition comprises a protein expressed from a nucleic acid of SEQ. ID No. 2. Since SEQ. ID No. 2 describes a nucleic acid sequence encoding for residues 136-461 of AKT3 (*i.e.*, SEQ. ID No. 1), the protein expressed from the nucleic acid of SEQ. ID No. 2 necessarily comprises at least a portion of residues 143-438 of SEQ. ID No. 1. Lastly, with regard to independent claims 17 and 18, the protein of SEQ. ID No. 3 comprises residues 136-461 of SEQ. ID No. 1 (as residues 231-556 of SEQ. ID No. 3).

**B. Request for Reconsideration**

In view of the common thread running through the elected and non-elected claims, Applicants submit that the claims of Groups I-III are not independent or distinct and examination of the entire application does not place a serious burden on the examiner. Accordingly, examination of Groups I-III without restriction is appropriate and the restriction requirement should be withdrawn. If the Examiner nonetheless insists on a restriction, Applicants propose a more moderate restriction of between New Group A (current Groups I and II) and New Group B (current Group III). Finally, Applicants submit that rejoinder is appropriate, following allowance of the elected claims, should this restriction not be withdrawn.

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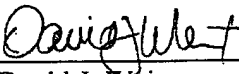
### CONCLUSION

Applicants earnestly believe that they are entitled to a letters patent, and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,

Takeda San Diego, Inc.

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By:   
David J. Weitz  
Reg. No. 38,362

Customer No. 32793  
Takeda San Diego, Inc.  
10410 Science Center Drive  
San Diego, CA 92121  
Telephone: (858) 622-8528  
Facsimile: (858) 550-0992